

Mexico-domiciled Motor Carrier Operations Beyond U.S. Municipalities and Commercial Zones On the U.S./Mexico Border

Process For Obtaining Operating Authority

Executive Summary

The process for Mexico-domiciled carriers to obtain U. S. operating authority is contained in the Federal Motor Carrier Safety Administration's (FMCSA's) rules entitled, "Application by Certain Mexico-Domiciled Motor Carriers to Operate Beyond U.S. Municipalities and Commercial Zones on the United States-Mexico Border" and "Safety Monitoring System and Compliance Initiative for Mexico-domiciled Motor Carriers Operating in the United States." This paper summarizes the information contained in the rules mentioned above into an easy-to-read overview of the process.

This process applies to any Mexico-domiciled motor carrier of property or passengers seeking authority to operate between Mexico and points in the United States beyond the border zones and is comprised of three sub-processes:

- Initial application,
- Operations under provisional authority, and
- Operations under permanent authority.

Application Process

The application process represents the first phase in a carrier's efforts to obtain U.S. operating authority. To successfully complete the application process a carrier must accomplish two activities— correctly complete the application package, accompanied by an application fee; and pass a safety audit.

Provisional Operating Authority

FMCSA has implemented a safety monitoring system and compliance initiative to help determine whether Mexico-domiciled carriers conducting operations anywhere in the United States comply with applicable safety regulations and conduct safe operations. The two major elements of this safety monitoring system are:

- Compliance monitoring via a compliance review (CR) and
- Roadside performance monitoring.

Permanent Authority

Mexico-domiciled carriers that demonstrate acceptable levels of safety performance and receive a satisfactory rating from the CR will be issued permanent operating authority at the end of the 18-month provisional period. FMCSA will send written notification to the carrier indicating that the status of its operating authority has been changed from provisional to permanent.

Once Mexico-domiciled carriers have been issued permanent operating authority, they will fall under the same safety requirements and operational procedures applied to U.S. and Canadian carriers, with one exception. For a period of three years, Mexico-domiciled carriers that have been granted permanent operating authority will still be required to ensure that all their vehicles that operate beyond the border zone display a valid Commercial Vehicle Safety Alliance (CVSA) decal. Decals are valid for 90 days.

Process For Obtaining Operating Authority

The process for obtaining operating authority applies to any Mexico-domiciled carrier of property or passengers seeking authority to operate between Mexico and points in the United States beyond the border commercial zones and is comprised of three sub-processes – initial application, operations under provisional authority, and operations under permanent authority. Each of these is described in more detail below.

Application Process

The application process represents the first phase in a carrier's efforts to obtain U.S. operating authority. To successfully complete the application process a carrier must accomplish two activities:

- Correctly complete and file the OP-1(MX) application package, accompanied by an application fee and
- Pass a safety audit.

COMPLETING AND FILING AN OP-1(MX) APPLICATION

The first step in the application process is to thoroughly and accurately complete the application forms. Applications containing missing or incomplete information will delay processing until the necessary information is provided. The following provides an overview of the steps involved in obtaining, completing and filing an OP-1(MX) application.

Obtaining a Copy of the OP-1(MX) Application Package

Mexico-domiciled carriers can obtain a copy of the application package:

- Through the mail by calling FMCSA's Information Line (001-800-832-5660 from Mexico or 1-800-832-5660 from the U.S. or Canada) or any FMCSA Division office and requesting the OP-1(MX) application package or
- Through the FMCSA web site on the Internet at www.fmcsa.dot.gov.

Attending a 1-Day Seminar on U.S. Safety Requirements (Optional)

FMCSA has developed a 1-day seminar on U.S. safety requirements for Mexico-domiciled carriers seeking U.S. operating authority. The seminar provides an overview of the U.S. safety regulations and process for obtaining U.S. operating authority. The information provided at the seminar will be valuable to the carrier in completing the application and preparing for the upcoming Safety Audit. Although participation in the seminar is not mandatory, carriers are strongly encouraged to attend. Information about the time and location of future seminars will be provided to the Mexican trucking associations, the Secretaría de Comunicaciones y Transportes, and will be distributed to drivers at major border crossings.

Completing the Application

The application package is printed in English and Spanish, **but the carrier's responses must be written in English.** It is very important that the carrier provides all required information and completes the application in its entirety before mailing it back. Applications with missing information will be returned to the carrier. Information provided on the application will be checked against a variety of U.S. and Mexican databases to ensure that the carrier is eligible to apply for authority.

Filing the Application

All applicants must submit the following documents and fee to FMCSA:

- **OP-1(MX) Application:** An original and one copy of a completed Form OP-1(MX), Application to Register Mexican Carriers for Motor Carrier Authority to Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border, with all necessary attachments and statements.
- **Motor Carrier Identification Report (Form MCS-150):** A completed and signed Form MCS-150, Motor Carrier Identification Report. The MCS-150 provides basic information about the carrier's operation necessary to maintain FMCSA's carrier census database.
- **Designation of Agents for Process (Form BOC-3):** A carrier must provide a signed and dated Form BOC-3, Designation of Agents for Service of Process, **or** use a process service agent who will electronically file the BOC-3 within 90 days. The BOC-3 form must show the street addresses for the person(s) designated as the agent(s) for serving notices of enforcement action. A process agent must be designated in each state in which the applicant may operate. **The applicant may not begin operations unless the Form BOC-3 has been filed with the FMCSA.**
- **Filing Fee:** Except for those carriers that have already paid the fee, a filing fee of \$300 for **each** type of registration requested (e.g., contract, common or household goods) payable in U.S. dollars on a U.S. Bank to the FMCSA by means of check, money order or credit card must accompany the application.

The completed application, fee and above-mentioned documents should be sent to either FMCSA's Trans-border Office (if paying with a credit card) or to FMCSA's Lockbox (if paying by check or money order). The addresses are as follows:

FMCSA Trans-Border Office

FMCSA Trans-border Office
P.O. Box 530870
San Diego, CA 92153

FMCSA Lockbox Addresses

FOR REGULAR DELIVERY:
Federal Motor Carrier Safety Administration
P. O. Box 100147
Atlanta, GA 30384-0147

FOR EXPRESS MAIL ONLY:
Bank of America, Lockbox 100147
6000 Feldwood Road
3rd Floor East
College Park, GA 30349

Providing Proof of Insurance

The carrier is not required to submit proof of insurance with the application. However, the carrier must present evidence of insurance coverage as part of the pre-authority Safety Audit. Also, if the carrier passes the audit, the carrier's insurance company must file the appropriate insurance forms (Form BMC-91 or BMC-91X for bodily injury and property damage; Form BMC-34 for cargo liability) with FMCSA within **90 days** after the date that notice of the carrier's application is published in the DOT/FMCSA Register.

PASSING A SAFETY AUDIT

The second major element of the application process is the pre-authority Safety Audit. The Safety Audit consists of a review of the carrier's safety data, a review of requested motor carrier documents, vehicle inspections, and an interview session with the motor carrier's safety official by a trained safety auditor. The following steps describe this aspect of the application process.

Preparing for the Audit

In addition to completing the OP-1(MX) application package, Mexico-domiciled carriers seeking U.S. operating must also receive and **pass** an FMCSA Safety Audit prior to receiving provisional operating authority. FMCSA recommends that a Mexican carrier do the following things in preparation for the audit:

- Obtain a copy of FMCSA's Educational and Technical Assistance (ETA) Package through the Internet at www.fmcsa.dot.gov/factsfigs/eta/index.html (English) or [www.fmcsa.dot.gov/spanish/eta/ETA\(SP\)_index.html](http://www.fmcsa.dot.gov/spanish/eta/ETA(SP)_index.html) (Spanish)
- Attend the 1-day Mexico-domiciled Carrier Seminar
- Ensure all vehicles intended for operations beyond the U.S. commercial zones have current CVSA decals
- Become familiar with the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs) (if appropriate). These regulations are available through the Internet at www.fmcsa.dot.gov/rulesregs/fmcsrhome.htm

Scheduling the Audit

The FMCSA Division Office assigned to the carrier's business location will contact the carrier to schedule a mutually agreeable time and place for conducting the audit. FMCSA is required to conduct at least 50% of all safety audits on-site at the carrier's place of business. The remaining 50% may be conducted at sites other than the carrier's place of business depending on variables such as the size of the carrier, commodity hauled, and location of the carrier's place of business. A letter will be sent to the carrier documenting when and where the safety audit will be held.

Participating in the Audit

The objective of the safety audit is to both educate the carrier on compliance with the FMCSRs and HMRs and to determine areas where the carrier might be deficient in terms of compliance. The safety auditor will use a series of questions regarding the carrier's safety management practices and safety performance to ensure that all applicable acute and critical areas of the FMCSRs and HMRs are addressed. Areas covered include the qualification of drivers, driving a motor vehicle, hours of service, inspection, repair, and maintenance, transporting and marking hazardous materials, controlled substance and alcohol use and testing, commercial driver's license standards, and financial responsibility. At the end of the audit, the carrier will receive a report listing any deficiencies that may have been found along with recommendations for correcting those deficiencies. If the carrier passes the pre-authority safety audit and FMCSA approves its application, the Agency will publish a summary of the application as a preliminary grant of authority in the DOT/FMCSA Register. FMCSA will notify the carrier of the results of the audit (Pass or Fail) within 45 days after completion of the audit.

Passing the Audit

Carriers that pass the audit will receive:

- A letter stating that they have passed the audit and
- A reminder that the carrier is required to have a Form BOC-3 (Designation of Agents) and insurance forms on file with the FMCSA before operating authority can be issued.

Once the Form BOC-3 and the insurance forms have been filed, the FMCSA will send the carrier a package of materials that will contain:

- A certificate authorizing the carrier to operate in the United States for a period of 18 months and
- A USDOT number.

The USDOT number must be displayed on both sides of any vehicle intended for use in the United States before a carrier can operate in the United States. Also, a current DOT Form MCS-90 and evidence of continuing insurance coverage must be on each of the carrier's vehicles when it crosses the border.

Failing the Audit

Carriers that fail the audit will receive a letter from the FMCSA informing them that they failed the safety audit along with instructions for re-applying.

Operating with Provisional Authority

FMCSA has implemented a safety monitoring system and compliance initiative to help determine whether Mexico-domiciled carriers conducting operations anywhere in the United States comply with applicable safety regulations and conduct safe operations. The two major elements of this safety monitoring system are:

- compliance monitoring via a Compliance Review and
- roadside performance monitoring.

Each of these elements is discussed below.

FMCSA COMPLIANCE REVIEW

All Mexico-domiciled carriers seeking permanent U.S. operating authority to operate beyond the commercial zones must undergo an FMCSA-conducted Compliance Review (CR). A CR is a process whereby a federal safety investigator examines a carrier's trucking operation to determine compliance with the FMCSRs and HMRs (if applicable). It focuses on not only the carrier's safety management controls, but also the carrier's operational performance and regulatory compliance.

Participating in a Compliance Review

At some point within the 18-month provisional operating period, FMCSA is required to conduct a Compliance Review (CR) consistent with federal safety fitness evaluation procedures. As a result of the CR, the carrier will be issued a safety rating of satisfactory, conditional or unsatisfactory. Carriers must receive a satisfactory rating in order to qualify for permanent operating authority. Enforcement action in the form of fines, suspension or revocation of operating authority may result from a CR.

Scheduling the Compliance Review

FMCSA's Division Office will call the carrier to schedule a mutually agreeable time and location for conducting the compliance review. The call will be followed up with a letter to the carrier documenting when and where the compliance review will be held.

Receiving a Satisfactory Rating

If the CR reveals that the carrier is in compliance with the FMCSRs and HMRs (if appropriate) and has basic safety management controls in place that are functioning adequately, the carrier will receive a satisfactory safety rating. The Mexican carrier's provisional operating authority will remain in place and its performance will remain closely monitored by the FMCSA until the end of the 18-month period.

Receiving an Unsatisfactory or Conditional Rating

If a carrier receives an unsatisfactory rating as a result of a CR due to severe safety problems and/or non-compliance with the FMCSRs and HMRs (if appropriate), FMCSA will notify the carrier that it is required to take action to improve its safety practices if it wishes to continue to operate in the United States. The carrier's operating authority would be suspended effective 15 days after the service date of the notice and an Operations Out of Service Order would be imposed, prohibiting it from operating any motor vehicle in the United States, unless the carrier demonstrates, within 10 days of the service date of the notice, that the compliance review contains material error. Failure to take the necessary corrective action within 45 days of the service date of an unsatisfactory rating would result in the revocation of a carrier's provisional operating authority. A follow-up review would be conducted to ensure that all corrective actions have been taken.

Carriers receiving a conditional rating would have their provisional operating authority revoked and an Operations Out of Service Order imposed if the necessary corrective action is not taken within 45 days after the service date of the rating. A follow-up review would be conducted to ensure that all corrective actions have been taken.

ROADSIDE PERFORMANCE MONITORING

During the 18-month period following issuance of provisional operating authority, the over-the-road safety performance of Mexico-domiciled carriers will be tracked and assessed through a comprehensive roadside performance monitoring system. The major aspects of that system are presented below.

Checking Mexican Commercial Motor Vehicle (CMV) Drivers Licenses

Federal and State inspectors will be required to electronically verify the status and validity of the Licencia Federal of Mexican commercial drivers for the following commercial vehicles:

- Vehicles carrying placardable quantities of hazardous materials;
- Vehicles undergoing a Level 1 inspection; and
- Randomly selected Mexican commercial vehicles (at least 50% of all Mexican vehicles operating beyond the commercial zones).

Inspecting All CMVs of Mexico-Domiciled Carriers Without CVSA Decals

All vehicles of Mexico-domiciled carriers that do not display a currently valid CVSA decal will be inspected by certified inspectors, including examination of the driver, vehicle exterior and vehicle under-carriage for a period of 4.5 years (1.5 years while operating with provisional authority and 3 years while operating with permanent authority.) In addition, a certified CVSA inspector may inspect any vehicle, at any time, either at the border or roadside, regardless of whether the vehicle has a CVSA decal.

Using Expedited Action Letters to Alert Carriers to Safety Problems

Mexico-domiciled motor carriers that commit certain violations discovered as part of a roadside inspection or other means may be subject to an expedited safety audit or compliance review (if the carrier has not already had one) or ***issued an expedited action letter*** identifying the violations and directing the carrier to submit a written response demonstrating corrective action. The specific violations that may generate an expedited action letter include:

- Using drivers not possessing, or operating without a valid Commercial Driver's License (CDL) or Licencia Federal de Conductor (LF);
- Operating vehicles that have been placed out-of-service (OOS) for CVSA OOS violations without making required repairs;
- Involvement in, due to carrier act or omission, a hazardous materials (HM) incident within the United States involving highway route controlled quantity of certain HM;
- Involvement in, due to carrier act or omission, two or more hazardous materials incidents within the United States;
- Using a driver who tests positive for drugs or alcohol or who refuses to submit to required drug or alcohol tests;
- Operating within the United States a motor vehicle that is not insured as required by 49 CFR Part 387;
- Having a driver or vehicle OOS rate of at least 50% based upon three inspections within a consecutive 90-day period.

Failure to respond to an agency request for a written response demonstrating corrective action within 30 days will result in suspension of the carrier's provisional operating authority until the required showing of corrective action is submitted to the FMCSA. Expedited CRs and the use of expedited action letters will only apply during the 18-month monitoring period.

In addition, Mexico-domiciled carriers identified as "at risk" by FMCSA's SafeStat performance system may receive a compliance review regardless of whether they are operating with provisional authority.

Operating With Permanent Authority

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